

## APPENDIX

### **Opinion and Decree**

(Decided: April 26, 1963)

IN THE

CIRCUIT COURT, TENTH JUDICIAL CIRCUIT OF ALABAMA

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CITY OF BIRMINGHAM, A MUNICIPAL CORPORATION OF THE  
STATE OF ALABAMA,

v.

WYATT TEE WALKER ET AL.

THIS CAUSE coming on to be heard is submitted for decree upon the original petition of complainant to require the defendants, as named therein, to show cause, if any they have, why they should not be found guilty of contempt for violating this Court's order which enjoined the original respondents as named in the bill of complaint and others acting in concert with them from doing said unlawful acts as prohibited therein.

The said petition charges the violating of the Court's order granting the temporary injunction by their issuance of a press release, a copy of which is attached as an exhibit to the petition, which release allegedly contained derogatory statements concerning Alabama Courts and the injunctive order of this Court in particular. The said petition further charges the violation of the said injunctive order by the defendants' participating in and conducting certain alleged parades in violation of an ordinance

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of the City of Birmingham which prohibits parading without a permit.

The defendants in answer thereto filed a general denial of the pertinent allegations as contained in the said petition of the City.

Evidence was thereupon taken in open Court upon the issues as raised by said pleadings. Upon conclusion of the evidence as offered by the city, the respondents' counsel moved the Court to exclude the evidence as to the following defendants: Ed Gardner, Calvin Woods, Aberham Woods, Jr. and Johnny Louis Palmer and to dismiss said defendants from said petition for failure of the city to offer proof upon which said defendants could be found guilty, and the Court, thereupon, granted said motion and dismissed said defendants. A like motion was made at the conclusion of the evidence as to the Defendant, Andrew Young, and was taken under submission, but the Court is now of the opinion that said motion should be denied.

The Charges cited in the said petition constitute past acts of disobedience and disrespect for the orders of this Court and the nature of the order sought would be to punish the defendants for their said acts of contempt and would, in the opinion of this Court, constitute this proceeding as an action for criminal contempt.

The defendants have assumed the position throughout this proceeding that the acts for which they are cited are not unlawful acts and that they do not refuse to obey the lawful order of this Court, but that the acts which they have performed were those protected by the First and Fourteenth Amendments to the Constitution of the United States, the due process and equal protection clauses thereof, and by Article I, Section 25 of the Alabama Constitution; that the exercise of their constitutional rights

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under the above stated provisions were denied them by Section 369 of the 1944 Code of Birmingham; and that because of such denial of said rights, the order of this Court enjoining the violation of said ordinance was a void order for which they were not required to comply, citing as their authority, among other cases, that of *Thomas vs. Collins*. 65 Sup Ct 315

On the other hand, the City takes the position that the order of this Court granting the temporary injunction was an exercise of the authority of a Court of Equity over such subject matter and such individuals over which the Court maintained lawful jurisdiction. The City further takes the position that the said ordinance as it applies to these defendants requiring a permit to parade is on its face a valid and legal exercise of the police power; and that in order to attack its validity all the requirements of the said ordinance must be complied with or the defendants must make a showing to a duly constituted tribunal that a substantial compliance was attempted and the City was unreasonable and arbitrary in its denial of such requests. That before attacking the validity of this Court's order enjoining the violation of such ordinance, the defendants would be required first to seek to prove to the Court that such unconstitutional action in depriving the parties of a permit would amount to a violation of their rights and would require the City to issue such a permit. The City contends that the defendants made no valid attempt to secure a permit in accordance with the requirements of the ordinance; and that there is no evidence that if such request was made that the permit would have been denied. The City cites as its authority for its position, among other cases, that of *Cox vs. State of New Hampshire* 61 Supreme Court 762.

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It is the considered opinion of this Court that the principles and the law as enunciated in the case of Cox vs. New Hampshire, supra, is controlling in this cause; and that the said ordinance is not invalid upon its face as a violation of the constitutional rights of free speech as afforded to these defendants in the absence of a showing of arbitrary and capricious action upon the part of the Commission of the City of Birmingham in denying the defendants a permit to conduct a parade on the streets of the City of Birmingham. The legal and orderly processes of the Court would require the defendants to attack the unreasonable denial of such permit by the Commission of the City of Birmingham through means of a motion to dissolve the injunction at which time this Court would have the opportunity to pass upon the question of whether or not a compliance with the ordinance was attempted and whether or not an arbitrary and capricious denial of such request was made by the Commission of the City of Birmingham. Since this course of conduct was not sought by the defendants, the Court is of the opinion that the validity of its injunction order stands upon its prima facie authority to execute the same.)

Under all the evidence in the case, the Court is convinced beyond a reasonable doubt that the remaining defendants had actual notice of the existence of the prohibitions, as contained in the injunction, and of the existence of the order itself; and that the actions of all the remaining defendants were, in the opinion of this Court, obvious acts of contempt, constituting deliberate and blatant denials of the authority of this Court and its order and were concerted efforts to both personally violate the said injunctive order and to use the persuasive efforts of their positions as ministers to encourage and incite others to do likewise.

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There has been no apology or indication whatsoever on the part of the remaining defendants to comply in the future with this injunctive order. Under these circumstances it must be expected that the full authority as allowed by statute must be exercised in order to protect the dignity of this Court of Equity and to enforce its lawful orders.

However, the Court feels compelled to urge upon the defendants to consider carefully their course of conduct in the future and the following words of Mr. Justice Frankfurter (from his concurring opinion in the case of the United States vs. The United Mine Workers of America 330 US 308) should be a guide to us all when considering the jurisdictional authority of a Court of law:

"The historic phrase "a government of laws and not of men" epitomizes the distinguishing character of our political society. By putting that phrase into the Massachusetts Declaration of Rights, John Adams was expressing the aim of those who, with him, framed the Declaration of Independence and founded the Republic. This phrase was the rejection in positive terms of Rule by Fiat, whether by the fiat of governmental or private power. Every act of government may be challenged by an appeal to law, as finally pronounced by this Court. Even this Court has the last say only for a time. Being composed of fallible men, it may err. But revision of its errors must be by orderly process of law. But no one, no matter how exalted his public office or how righteous his private motive, can be judge in his own case. That is what courts are for. And no type of controversy is more peculiarly fit for judicial determination than a con-

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troversy that calls into question the power for a court to decide.

"Short of an indisputable want of authority on the part of a court, the very existence of a court presupposes its power to entertain a controversy, if only to decide, after deliberation that it has no power over the particular controversy.

"Whether a defendant may be brought to the bar of justice is not for the defendant himself to decide.

"In our country law is not a body of technicalities in the keeping of specialists or in the service of any special interest. There can be no free society without law administered through an independent judiciary. If one man can be allowed to determine for himself what is the law, every man can. That means first chaos then tyranny. Legal process is an essential part of the democratic process. For legal process is subject to democratic control by defined, orderly ways which themselves are part of law. In a democracy, power implies responsibility. The greater the power that defies law the less tolerant can this Court be of defiance.

"This Court is the trustee of law and charged with the duty of securing obedience to it."

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. That motion of Defendants, Ed Gardner, Calvin Woods, Aberham Woods, Jr. and Johnny Louis Palmer, to exclude the evidence as to said defendants and to dismiss said defendants as to this petition be and the same is hereby granted;

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2. That the motion of Defendant, Andrew Young, to exclude the evidence as to him and to dismiss him as a defendant to the petition herein be and is hereby denied;

3. That the following defendants be and the same are hereby adjudged in contempt of this Court: Martin Luther King, Jr., Ralph Abernathy, A. D. King, Wyatt Tee Walker, Andrew Young, J. W. Hayes, N. H. Smith, Jr., James Bevels, T. L. Fisher, John Thomas Porter, and F. L. Shuttlesworth, and all of said defendants shall hereby stand committed to the custody of the Sheriff of Jefferson County, Alabama, for a period of five consecutive days beginning at 10:00 A. M. on Thursday, the 16th day of May, 1963;

4. That the said defendants as herein adjudged to be in contempt be and the same are also hereby fined the sum of Fifty (50) Dollars each and upon failure of any defendant to pay the said fine so imposed, the Sheriff of Jefferson County, Alabama, is ordered to retain the custody of such defendant and that said defendant, thereupon, perform hard labor for said county for said fine at the rate of Three (3) Dollars per day not to extend twenty (20) days;

5. That the taxing of costs in this proceeding is hereby reserved until such time as a hearing has been held as to the amended petition to show cause.

DONE AND ORDERED, this the 26 day of April, 1963.

W. A. Jenkins, Jr.  
CIRCUIT JUDGE, IN EQUITY SITTING.

Filed in Office April 26, 1963.

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(Decided: December 9, 1965)

**THE STATE OF ALABAMA****JUDICIAL DEPARTMENT****THE SUPREME COURT OF ALABAMA**

OCTOBER TERM, 1965-66

6 Div. 999

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**Ex parte Wyatt Tee Walker, et al.**

(In re: Wyatt Tee Walker, et al.)

v.

**City of Birmingham, a Municipal  
Corporation of the State of  
Alabama)**

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**Petition for Writ of Certiorari to Jefferson Circuit Court,  
In Equity**

**COLEMAN, JUSTICE.**

We review by certiorari convictions of petitioners for criminal contempt for violating a temporary injunction issued by the Circuit Court of Jefferson County, in equity.

On April 10, 1963, the City of Birmingham, a municipal corporation, presented its verified bill of complaint to one of the judges of the Tenth Judicial Circuit. The bill prayed for temporary and permanent injunctions. The judge to whom the bill was presented ordered the temporary injunction to issue upon the City's making bond for \$2,500.00.

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The prescribed bond was filed and injunction issued out of the circuit court and was served on certain of petitioners.

The return of the sheriff shows that a copy of the injunction was personally served on petitioners as follows:

On Martin Luther King, A. D. King, F. L. Shuttlesworth, Wyatt Tee Walker, and Ralph Abernathy on April 11, 1963, at 1:00 a.m.;

On John Thomas Porter on April 12, 1963, at 4:13 p.m.; and

On N. H. Smith, Jr. on April 15, 1963, at 8:35 a.m.

We have not found a return of the sheriff showing service on the other petitioners who were adjudged to be in contempt. Notice to those not personally served is hereinafter discussed.

The injunction recites in part as follows:

"THESE, THEREFORE, are to temporarily Enjoin you Wyatt Tee Walker; Ralph Abernathy; Al Hibler; F. L. Shuttlesworth; Martin Luther King, Jr.; Aberham Woods, Jr.; Calvin Woods; A. D. King; Alabama Christian Movement for Human Rights by serving copy on Fred L. Shuttlesworth as President, and all other persons in active concert or participation with the respondents to this action and all persons having notice of this action from engaging, sponsoring, inciting or encouraging mass street, parades or mass processions or like demonstrations without a permit, trespass on private property after being warned to leave the premises by the owner or person in possession of said private property, congregating on the street or public places into mobs, and unlawfully picketing business establishments or public buildings

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in the City of Birmingham Jefferson County, State of Alabama or performing acts calculated to cause breaches of the peace in the City of Birmingham, Jefferson County, in the State of Alabama or from conspiring to engage in unlawful street parades, unlawful processions, unlawful demonstrations, unlawful boycotts, unlawful trespasses, and unlawful picketing or other like unlawful conduct or from violating the ordinances of the City of Birmingham and the Statutes of the State of Alabama or from doing any acts designed to consummate (sic) conspiracies to engage in said unlawful acts of parading, demonstrating, boycotting, trespassing and picketing or other unlawful acts, or from engaging in acts and conduct customarily known as 'Kneel-In's' in churches in violation of the wishes and desires of said churches, until further orders from this Court; and this you will in no wise omit under penalty, etc."

On April 11, 12, and 13, 1963, certain meetings were held at which some or all of petitioners were present.

On April 11, 1963, "The Revs. King, Abernathy, and Shuttlesworth were seated at the round table." Several copies of "a news bulletin put out by the Alabama Christians for Human Rights" were brought there by "Rev. Wyatt Tee Walker." After the bulletin was distributed to members of the press, ". . . Rev. Martin Luther King took one copy of it and read verbatim the entire text." The paper he read appears in the record as follows:

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**"COMPLAINANT'S EXHIBIT 2**

**"NEWS from**

**"ALABAMA CHRISTIAN MOVEMENT FOR HUMAN RIGHTS  
5051/2 No. 17th Street  
B'ham, Ala.**

**"FOR RELEASE 12:00 Noon, April 11, 1963**

**"STATEMENT BY M. L. KING, JR., F. L. SHUTTLESWORTH,  
RALPH D. ABERNATHY, et al. FOR ENGAGING IN PEACEFUL  
DESEGREGATION DEMONSTRATIONS**

**"In our struggle for freedom we have anchored our  
faith and hope in the rightness of the Constitution  
and the moral laws of the universe.**

**"Again and again the Federal judiciary has made it  
clear that the privileges (sic) guaranteed under the  
First and the Fourteenth Amendments are to (sic)  
sacred to be trampled upon by the machinery of state  
government and police power. In the past we have  
abided by Federal injunctions out of respect for the  
forthright and consistent leadership that the Federal  
judiciary has given in establishing the principle of  
integration as the law of the land.**

**"However we are now confronted with recalcitrant  
forces in the Deep South that will use the courts  
to perpetuate the unjust and illegal system of racial  
separation.**

**"Alabama has made clear its determination to defy  
the law of the land. Most of its public officials, its  
legislative body and many of its law enforcement  
agents have openly defied the desegregation decision**

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of the Supreme Court. We would feel morally and legal responsible to obey the injunction if the courts of Alabama applied equal justice to all of its citizens. This would be

"MORE

MORE

MHH

—2—

sameness made legal. However the issuance (sic) of this injunction is a blatant of *difference* made *legal*.

— "Southern law enforcement agencies have demonstrated now and again that they will utilize the force of law to misuse the judicial process.

"This is raw tyranny under the guise of maintaining law and order. We cannot in all good conscience obey such an injunction which is an unjust, undemocratic and unconstitutional misuse of the legal process.

"We do this not out of any disrespect (sic) for the law but out of the highest respect for *the* law. This is not an attempt to evade or defy the law or engage in chaotic anarchy. Just as in all good conscience we cannot obey unjust laws, neither can we respect the unjust use of the courts.

"We believe in a system of law based on justice and morality. Out of our great love for the Constitution of the U. S. and our desire to purify the judicial system of the state of Alabama, we risk this critical move with an awareness of the possible consequences involved.

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"FOR FURTHER INFORMATION—Phone 324-5944

Wyatt tee walker  
Public Information  
Officer"

"... Shuttlesworth read from a typed statement more or less re-affirming what was said in the statement that was read by Rev. King." Shuttlesworth made the statement:

"That they had respect for the Federal Courts, or Federal Injunctions, but in the past the State Courts had favored local law enforcement, and if the police couldn't handle it, the mob would."

"... Rev. Martin Luther, in response to a question, said, 'We will continue today, tomorrow, Saturday, Sunday, Monday, and on.' ..."

Lieutenant House testified:

"Q. All right. Now, a moment ago, you made the statement all three of them said that they were going to proceed regardless of the injunction, or words to that affect. I don't recall the exact words you used.  
A. I don't recall whether they said regardless of the injunction, but all three of them in their statement says, 'This statement that Rev. Martin Luther King read was a joint statement of the three,' and so stated on the top of his statement, and all three of them mentioned knowledge of the injunction, and said they were going to continue on. I believe Rev. Martin Luther King stated that the—just before stating, 'We will continue on today, tomorrow, and Saturday, Sunday, and Monday, and on', just before that remark,

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he stated that, "The attorneys would attempt to dissolve the injunction, but we will continue on today, tomorrow, Saturday, Sunday, Monday, and on".

"....."

"Q. What sort of reaction did you hear from those present, including the Rev. A. D. King? A. He said on three or four occasions, or two I remember specifically, when he remarked, 'Dam the torpedoes', there was a loud applause by everyone in the background, and also the group that was gathered close by there, and also to 'Give me liberty or give me death', there was a lot of noise and applaud to that. There was applauding on several occasions. I don't recall the exact terms."

J. Walter Johnson, Jr., reporter for Associated Press, testified:

"Q. Were you present when the injunction was served? A. Yes, I was.

"Q. You were present, and that was in the middle of the night, you say? A. Yes.

"Q. Was this remark made then at that time? A. That direct quote, they were marching at the—just a minute, and I will be happy to find it. He said this direct—this is what Shuttlesworth said, speaking of the injunction handed to him: 'This is a flagrant denial of our constitutional privileges.'

"Q. All right. A. 'In no way will this retard the thrust of this movement.' He said they would have to study the details. He said, 'An Alabama injunction is used to misuse certain constitutional privileges that will never be trampled on by an injunction. That is

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what they were saying that particular night right after the injunction.

"Q. All right, who was present there at that time? A. Ralph Abernathy was there, Martin Luther King, Mr. Shuttlesworth, Wyatt Tee Walker, and there was some others I did not recognize, did not know them.

"Q. Some you did not know? A. Some I did not know. Abernathy made a statement at that time also. He said, 'An injunction nor anything else will stop the Negro from obtaining citizenship in his march for freedom.'"

Elvin Stanton, news director for WSGN Radio, testified that he was present at a meeting on April 11th, and that:

"A. The Rev. King said, 'Injunction or no injunction we are going to march tomorrow.' That is a direct quote."

Petitioners did not obtain a permit to march or parade. A march or parade occurred on Friday, April 12, and another march occurred on the streets of Birmingham on Sunday, April 14, 1963.

Willie B. Painter, investigator with Alabama Department of Public Safety, testified that he observed the Friday march, that several of petitioners entered a church, that within several minutes a group came out of the church and began a parade or march in the direction of downtown Birmingham, that:

"A. This group was led by Rev. Martin Luther King, Jr., Rev. Ralph Abernathy, Rev. Shuttlesworth, as I recall, Rev. Bernard Lee was also in the formation

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leading the group. There were several people following in this formation. As the group marched away from the church in the direction of downtown Birmingham a group of persons who had assembled along the sidewalk and the street followed this procession. This group of people would consist of several hundred.

"Q. Now, do you mean the marchers or the other group? A. The group following the marchers. Actually the whole procession was going almost as a group. As the group came out of the church then the whole group of people who had assembled along the sidewalk followed along behind them and I think you could describe it as one procession."

The witness, Painter, further testified that he was present at a church from 2:30 or 3:00 o'clock in the afternoon of Sunday, April 14, 1963; that he observed the petitioner, Walker, talking to a group "and forming a group of people two or three abreast"; that a group came out of the church and began walking rapidly along the sidewalk; that "this large crowd of people that had gathered outside the church began moving along with them"; that there were several hundred people within this group; that an object struck the windshield of one of the city motors and broke the windshield; that the witness saw a negro man throw a brick which "passed within a close range of one of the police officers there in the street on duty."

James Ware, newspaper photographer, testified that a rock, "About the size of a large grapefruit" hit him on the back of the head and caused a knot which was still sore; that a lot of people were "hollering, apparently at the policemen making the arrests"; that the witness saw only two rocks but heard several more falling around him;

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that he was concentrating on taking pictures of what was happening; that he identified A. D. King and Wyatt Tee Walker in the picture.

The witness Ware identified four pictures, which were introduced into evidence and are before us. Ware identified the pictures as being pictures which he took of the paraders on Sunday afternoon. The pictures show people walking in and entirely occupying a street from curb to curb on each side and on the sidewalks.

On Monday, April 15, 1963, the City of Birmingham filed petition alleging that respondents had violated the injunction and praying that rule nisi issue to respondents requiring them to show cause why they should not be adjudged and punished for contempt. Rule nisi did issue, hearing was had, and those respondents who have applied for certiorari were adjudged guilty of contempt of the circuit court and committed to the sheriff for five days and fined Fifty dollars each. We review this judgment by certiorari.

On the same Monday, April 15, 1963, respondents filed a motion to dissolve the temporary injunction which had been issued on April 10, 1963.

During the hearing on the charge that petitioners had violated the injunction, the trial court stated the issues presented by the evidence as follows:

"The Court: The only charge has been this particular parade, the one on Easter Sunday and the one on Good Friday, and on the question of the meeting at which time some press release was issued. Am I correct in that?

"Mr. Mc Bee: Essentially that is correct.

"The Court: I don't know of any other evidence or any other occasions other than those, and I see

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no need of putting on testimony to rebutt something where there has been no proof along that line."

Petitioners do not appear to deny the charge that they, or a number of them, did parade or march without a permit contrary to the order temporarily enjoining them "... from engaging; sponsoring, inciting or encouraging mass street parades or mass processions or like demonstrations without a permit ..."

Petitioners, on page 3 of brief, filed in this court July 19, 1963, admit that "After issuance of the injunctive order, petitioners and others continued their participation in these protest demonstrations and accordingly were held in contempt of the injunctive decree." On page 3 of brief petitioners say:

"The circumstances out of which this action arose are well known to the court. During April and May 1963, petitioners and others participated in protest demonstrations in Birmingham, Alabama in the form of picketing, 'sit-ins', and marches on the streets of the City of Birmingham, designed to evidence dissatisfaction with continuing racial segregation in that city and to persuade city officials and others to put an end to segregation. About one week after these demonstrations began, the City of Birmingham secured an injunction from the Circuit Court for the Tenth Judicial Circuit designed to thwart their continuation. After issuance of the injunctive order, petitioners and others continued their participation in these protest demonstrations and accordingly were held in contempt of the injunctive decree. Petitioners argued at the contempt hearing that the injunctive decree, designed as it was to prevent the exercise of their

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right to protest, was an invalid order. Petitioners reiterated this argument in the petition for certiorari filed herein, in the brief filed in support of the petition, and on oral argument before this Court on May 15, 1963.

"Little, therefore, remains to be added to what has already been urged in this Court. The issuance of the injunctive order, seen against the backdrop of the exercise by petitioners of well-established constitutional rights was beyond the jurisdiction of the court and hence void. . . ."

In the light of petitioners' statement in brief, it would be difficult to decide that petitioners did not violate the temporary injunction against engaging in mass street parades without a permit. Petitioners did engage in and incite others to engage in mass street parades and neither petitioners nor anyone else had obtained a permit to parade on the streets of Birmingham.

Petitioners argue that the injunctive order is void and, for that reason, the judgment of contempt is void.

The circuit court, in equity, is a court of general equity jurisdiction and has power to issue injunctions. Section 144 of Constitution of 1901 recites:

"Sec. 144. A circuit court, or a court having the jurisdiction of the circuit court, shall be held in each county in the state at least twice in every year, and judges of the several courts mentioned in this section may hold court for each other when they deem it expedient, and shall do so when directed by law. The judges of the several courts mentioned in this section shall have power to issue writs of injunction, re-

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turnable to the courts of chancery, or courts having the jurisdiction of courts of chancery."

§§ 1038 and 1039, Title 7, Code 1940, recite:

§ 1038. Injunctions may be granted, returnable into any of the circuit courts in this state, by the judges of the supreme court, court of appeals, and circuit courts, and judges of courts of like jurisdiction."

§ 1039. Registers in circuit court may issue an injunction, when it has been granted by any of the judges of the appellate or circuit courts when authorized to grant injunctions, upon the fiat or direction of the judge granting the same indorsed upon the bill of complaint and signed by such judge."

Petitioners do not argue that there was any failure to observe procedural requirements in the issuance of the injunction. We discuss later the question of lack of service on some petitioners.

Petitioners rest their case on the proposition that Section 1159 of the General City Code of Birmingham, which regulates street parades, is void because it violates the first and fourteenth amendments of the Constitution of the United States, and, therefore, the temporary injunction is void as a prior restraint on the constitutionally protected rights of freedom of speech and assembly.

It is to be remembered that petitioners are charged with violating a temporary injunction. We are not reviewing a denial of a motion to dissolve or discharge a temporary injunction. Petitioners did not file any motion to vacate the temporary injunction until after the Friday and Sunday parades. Instead, petitioners deliberately defied the order

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of the court and did engage in and incite others to engage in mass street parades without a permit.

The Supreme Court of the United States has said:

" . . . This Court has used unequivocal language in condemning such conduct, and has in *United States v. Shipp*, 203 U. S. 563 (1906), provided protection for judicial authority in situations of this kind. In that case this Court had allowed an appeal from a denial of a writ of *habeas corpus* by the Circuit Court of Tennessee. The petition had been filed by Johnson, then confined under a sentence of death imposed by a state court. Pending the appeal, this Court issued an order staying all proceedings against Johnson. However, the prisoner was taken from jail and lynched. Shipp, the sheriff having custody of Johnson, was charged with conspiring with others for the purpose of lynching Johnson, with intent to show contempt for the order of this Court. Shipp denied the jurisdiction of this Court to punish for contempt on the ground that the stay order was issued pending an appeal over which this Court had no jurisdiction because the constitutional questions alleged were frivolous and only a pretense. The Court, through Mr. Justice Holmes, rejected the contention as to want of jurisdiction, and in ordering the contempt to be tried, stated:

"We regard this argument as unsound. It has been held, it is true, that orders made by a court having no jurisdiction to make them may be disregarded without liability to process for contempt. *In re Sawyer*, 124 U. S. 200; *Ex parte Fisk*, 113 U. S. 713; *Ex parte Rowland*, 104 U. S. 604. But even if the Circuit Court had no jurisdiction to entertain John-

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son's petition, and if this court had no jurisdiction of the appeal, this court, and this court alone, could decide that such was the law. It and it alone necessarily had jurisdiction to decide whether the case was properly before it. On that question, at least, it was its duty to permit argument and to take the time required for such consideration as it might need. See *Mansfield, Coldwater & Lake Michigan Ry. Co. v. Swan*, 111 U. S. 379, 387. Until its judgment declining jurisdiction should be announced, it had authority from the necessity of the case to make orders to preserve the existing conditions and the subject of the petition, just as the state court was bound to refrain from further proceedings until the same time. Rev. Stat. § 766; act of March 3, 1893, c. 226, 27 Stat. 751. The fact that the petitioner was entitled to argue his case shows what needs no proof, that the law contemplates the possibility of a decision either way, and therefore must provide for it.' 203 U. S. 573.

"If this Court did not have jurisdiction to hear the appeal in the *Shipp* case, its order would have had to be vacated. But it was ruled that only the Court itself could determine that question of law. Until it was found that the Court had no jurisdiction, ' . . . it had authority from the necessity of the case to make orders to preserve the existing conditions and the subject of the petition. . . . '

"Application of the rule laid down in *United States v. Shipp, supra*, is apparent in *Carter v. United States*, 135 F. 2d 858 (1943). There a district court, after making the findings required by the Norris-LaGuardia

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Act, issued a temporary restraining order. An injunction followed after a hearing in which the court affirmatively decided that it had jurisdiction and overruled the defendants' objections based upon the absence of diversity and the absence of a case arising under a statute of the United States. These objections of the defendants prevailed on appeal, and the injunction was set aside. *Brown v. Caumanis*, 135 F. 2d 163 (1943). But in *Carter*, a companion case, violations of the temporary restraining order were held punishable as criminal contempt. Pending a decision on a doubtful question of jurisdiction, the District Court was held to have power to maintain the *status quo* and punish violations as contempt.

"In the case before us, the District Court had the power to preserve existing conditions while it was determining its own authority to grant injunctive relief. The defendants, in making their private determination of the law, acted at their peril. Their disobedience is punishable as criminal contempt.

"Although a different result would follow were the question of jurisdiction frivolous and not substantial, such contention would be idle here. The applicability of the Norris-LaGuardia Act to the United States in a case such as this had not previously received judicial consideration, and both the language of the Act and its legislative history indicated the substantial nature of the problem with which the District Court was faced.

"Proceeding further, we find impressive authority for the proposition that an order issued by a court with jurisdiction over the subject matter and person

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must be obeyed by the parties until it is reversed by orderly and proper proceedings. This is true without regard even for the constitutionality of the Act under which the order is issued. In *Howat v. Kansas*, 258 U. S. 181, 189-90 (1922) this Court said:

“An injunction duly issuing out of a court of general jurisdiction with equity powers upon pleadings properly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them, however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming but void law going to the merits of the case. It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished.”

“Violations of an order are punishable as criminal contempt even though the order is set aside on appeal, *Worden v. Searls*, 121 U. S. 14 (1887), or though the basic action has become moot, *Gompers v. Bucks Stove & Range Co.*, 221 U. S. 418 (1911).

“We insist upon the same duty of obedience where, as here, the subject matter of the suit, as well as the parties, was properly before the court; where the elements of federal jurisdiction were clearly shown; and where the authority of the court of first instance to issue an order ancillary to the main suit depended upon a statute, the scope and applicability of which were

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subject to substantial doubt. The District Court on November 29 affirmatively decided that the Norris-LaGuardia Act was of no force in this case and that injunctive relief was therefore authorized. Orders outstanding or issued after that date were to be obeyed until they expired or were set aside by appropriate proceedings, appellate or otherwise. Convictions for criminal contempt intervening before that time may stand.

" . . . . .

"Assuming, then, that the Norris-LaGuardia Act applied to this case and prohibited injunctive relief at the request of the United States, we would set aside the preliminary injunction of December 4 and the judgment for civil contempt; but we would, subject to any infirmities in the contempt proceedings or in the fines imposed, affirm the judgments for criminal contempt as validly punishing violations of an order then outstanding and unreversed" *United States v. United Mine Workers of America*, 330 U. S. 258, 290-295.

No useful purpose would be served by further discussion of this point. See concurring opinion of Harlan, J., in *In Re Green*, 369 U. S. 689, 693.

We hold that the circuit court had the duty and authority, in the first instance, to determine the validity of the ordinance, and, until the decision of the circuit court is reversed for error by orderly review, either by the circuit court or a higher court, the orders of the circuit court based on its decision are to be respected and disobedience of them is contempt of its lawful authority, to be punished. *Howat v. Kansas*, 258 U. S. 181.

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Petitioners Martin Luther King, Jr., Ralph Abernathy, A. D. King, Wyatt Tee Walker, and F. L. Shuttlesworth, are named in the injunction and were served with a copy on April 11, 1963. That they were active in inciting others to parade and actively participated in the parades or marches after they were served with a copy of the injunction is clearly shown by the testimony. Petitioners do not seem to argue in brief to the contrary. As to those five of the petitioners last named the judgment is due to be and is affirmed.

Petitioner Porter was served with a copy of the injunction on April 12, 1963, at 4:13 p.m. There is testimony that with respect to his participation in the parade on Sunday, April 14, 1963, "Rev. Porter stated that he was one of the leaders." There is other testimony that he engaged in the Sunday parade. The judgment against him is affirmed.

The general rule is that one who violates an injunction is guilty of contempt, although he is not a party to the injunction suit, if he has notice or knowledge of the injunction order, and is within the class of persons whose conduct is intended to be restrained, or acts in concert with such a person. See 15 A.L.R. 387, and authorities there cited.

The instant injunction enjoins the named respondents "and all other persons in active concert or participation with the respondents to this action." As to the petitioners who were not named as parties in the bill, or were not served with a copy of the injunction, we come now to consider the evidence going to show their knowledge of the terms of the injunction with respect to parades and the conduct of such petitioners in participating in the parades or marches.

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Petitioners Hayes, Smith, and Fisher were not served with a copy of the injunction until after the Sunday march. Each of them participated in the Sunday parade and there is evidence that each of them had knowledge of the injunction prior to that parade. Fisher testified that he attended the Friday and Saturday meetings. He also testified:

"Q. What did you hear about the injunction? What did they tell you about it? A. I only heard about the injunction. It wasn't interpreted to me.

"Q. Was it interpreted to you you would probably have to go to jail if you took part in that march or walk? A. Yes, but I didn't see any reason I would have to go.

"Q. I understand, but you were not told if you got in that march you would have to go to jail? A. I was told if I walked on the streets of Birmingham I would have to go to jail.

"Q. I am talking about this Easter Sunday procession. That is what they were talking about? A. That's right."

The witness Jones, City Detective, referring to Hayes, testified that:

"A. He stated he was with the leaders on the march. I asked him about the injunction. He knew of it, he said. I asked him was he just marching in the face of it anyway, and he said, 'Yes, he was doing it for human dignity.'"

Jones also testified that petitioner Smith stated that he "had knowledge of the injunction" prior to his participation in the Sunday parade.

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We think it would require of the trial court an unduly naive credulity to declare that the court erred in concluding that Hayes and Fisher had knowledge that marching on the streets was enjoined and that they knowingly and deliberately violated the injunction by marching or parading on Sunday. As to Hayes and Fisher the judgment against them is affirmed.

As to petitioner Smith we reach a different result. Smith was not a party to the suit and was not served with a copy of the injunction prior to the Sunday March. He was bound, alike with other members of the public, to observe its restrictions when known, to the extent that he must not aid or abet its violation by others, and the power of the court to proceed against one so offending and punish for the contemptuous conduct is inherent and indisputable. *Garrigan v. United States*, 89 C.C.A. 494, 163 Fed. 16. But, in order to convict a person of contempt where he is not a party and has not been served with a copy of the order, it must be shown clearly that he had knowledge of the order for the injunction in such a way that it can be held that he understood it, and, with that knowledge committed a wilful violation of the order. *Dowagiac Mfg. Co. v. Minnesota Moline Plow Co.*, 124 Fed. 736.

There is evidence that Smith "had knowledge" of the injunction and he testified that he had heard about the injunction on the radio, "Maybe Saturday," before the Sunday March. It may well be that Smith was fully advised of the terms of the injunction, but we think a finding to that effect must rest on speculation rather than on a reasonable inference from the testimony. The injunction restrains acts other than parading. Knowledge of other enjoined acts would not be knowledge of the injunction

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against parading. We hold that it is not clearly shown that Smith had knowledge of the injunction in such a way that it can be held that he understood it and with that knowledge committed a wilful violation of the injunction. The judgment of contempt against Smith is quashed.

We have not found in the record where petitioners Young and Bevel were served with a copy of the injunction. We have not found evidence to show that either of them participated in the march on either Friday or Sunday. We are not persuaded that the evidence sustains the judgment of contempt against them, and as to Young and Bevel the judgment holding them in contempt is quashed.

**Affirmed in part.**

**Quashed in part.**

**Livingston, C. J., and Lawson and Goodwyn, JJ., concur.**

**Judgment**

(Decided: December 9, 1965)

**THE SUPREME COURT OF ALABAMA**

Thursday, December 9, 1965

**THE COURT MET PURSUANT TO ADJOURNMENT****Present: ALL THE JUSTICES****JUDGMENT OF AFFIRMANCE**

6 Div. 999

Wyatt Tee Walker, et al.

v.

City of Birmingham

JEFFERSON CIRCUIT COURT  
IN EQUITY

Come the parties by attorneys and the record and matters therein assigned for errors being submitted on petition for certiorari and the return thereto and briefs, and the same being duly examined and understood by the Court,

IT IS CONSIDERED, ORDERED, ADJUDGED AND DECREED that the decree of the Circuit Court insofar as it pertains to Wyatt Tee Walker, Martin Luther King, Jr., Ralph Abernathy, A. D. King, J. W. Hayes, T. L. Fisher, F. L. Shuttlesworth and John Thomas Porter be and the same is in all things affirmed.

IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED AND DECREED that as to the petitioners, Andrew Young, N. H. Smith, Jr., and James Bevel, the decree of the Circuit Court adjudging

*Judgment*

these petitioners guilty of contempt be and the same is hereby quashed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Wyatt Tee Walker, Martin Luther King, Jr., Ralph D. Abernathy, A. D. King, J. W. Hayes, T. L. Fisher, F. L. Shuttlesworth and J. T. Porter, petitioners, and Jas. Esdale, Willie Esdale and Esdale Bail Bond Company, pay the costs incident to this proceeding in this Court and in the Court below, for which costs let execution issue.

Opinion by Coleman, J.

Livingston, C. J., Lawson and Goodwyn, J.J., concur.

**Denial of Rehearing**

(Decided: January 20, 1966)

**THE SUPREME COURT OF ALABAMA**

**Thursday, January 20, 1966**

**THE COURT MET PURSUANT TO ADJOURNMENT**

**Present: ALL THE JUSTICES**

6th Div. 999

Wyatt Tee Walker, et al.

v.

The City of Birmingham

} **JEFFERSON CIRCUIT COURT**  
**IN EQUITY**

**IT IS ORDERED** that the application for rehearing filed on December 23, 1965, be and the same is hereby overruled.

**Some Ordinances of City of Birmingham, Alabama,  
Requiring Segregation by Race**

*General Code of City of Birmingham, Alabama (1944)*

Sec. 369. *Separation of races*—It shall be unlawful to conduct a restaurant or other place for the serving of food in the city, at which white and colored people are served in the same room, unless such white and colored persons are effectually separated by a solid partition extending from the floor upward to a distance of seven feet higher, and unless a separate entrance from the street is provided for each compartment.

Sec. 597. *Negroes and white persons not to play together*—It shall be unlawful for a negro and a white person to play together or in company with each other in any game of cards or dice, dominoes or checkers.

Any person who, being the owner, proprietor or keeper or superintendent of any tavern, inn, restaurant or other public house or public place, or the clerk, servant or employee of such owner, proprietor, keeper or superintendent, knowingly permits a negro and a white person to play together or in company with each other at any game with cards, dice, dominoes or checkers, or any substitute or device for cards, dice, dominoes or checkers, in his house or on his premises shall, on conviction, be punished as provided in section 4.

*Building Code of City of Birmingham, Alabama (1944)*

Sec. 2002.1. *Toilet Facilities*—Toilet facilities shall be provided in all occupancies for each sex, according to Table 2002.2 except one family living units. The number provided for each sex shall be based on the maximum number of persons of that sex that may be expected to use such building at any one time. Where negroes and whites are accommodated there shall be separate toilet facilities provided for the former, marked plainly "For Negroes only."

**Statutes of State of Alabama  
Conferring Contempt Powers on Courts**

**Code of Alabama (Recompiled 1958)**

**Title 13, § 4. Other powers.**—Every court has power:

To preserve and enforce order in its immediate presence, and as near thereto as is necessary to prevent interruption, disturbance or hindrance to its proceedings.

To enforce order before a person or body empowered to conduct a judicial investigation under its authority.

To compel obedience to its judgments, orders and process, and to orders of a judge out of court, in an action or proceeding therein.

To control, in furtherance of justice, the conduct of its officers, and all other persons connected with a judicial proceeding before it, in every matter appertaining thereto.

To administer oaths in an action or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers and duties.

To amend and control its process and orders, so as to make them conformable to law and justice.

**Title 13, § 5. Punishment for contempt.**—For the effectual exercise of the powers conferred by this chapter, the court may punish for contempt in the cases provided for in this chapter.

**Title 13, § 9. Punishments by the respective courts for contempt.**—The courts of this state may punish for contempt by fine and imprisonment, one or both, as follows: The supreme court, by fine not exceeding one hundred dollars, and imprisonment not exceeding ten days; the circuit courts by fine not exceeding fifty dollars, and imprisonment

*Statutes of State of Alabama*  
*Conferring Contempt Powers on Courts*

not exceeding five days; the courts of probate and county courts and registers by fine of not exceeding twenty dollars and imprisonment not exceeding twenty-four hours; the courts of county commissioners, by fine not exceeding ten dollars, and imprisonment not exceeding six hours; and justices of the peace, by fine of not exceeding six dollars, and imprisonment not exceeding six hours.